

Redistricting/Reapportionment Overview

Legislative Redistricting Committee



Office of Legislative Research & General Counsel

May 18, 2021



Reapportionment

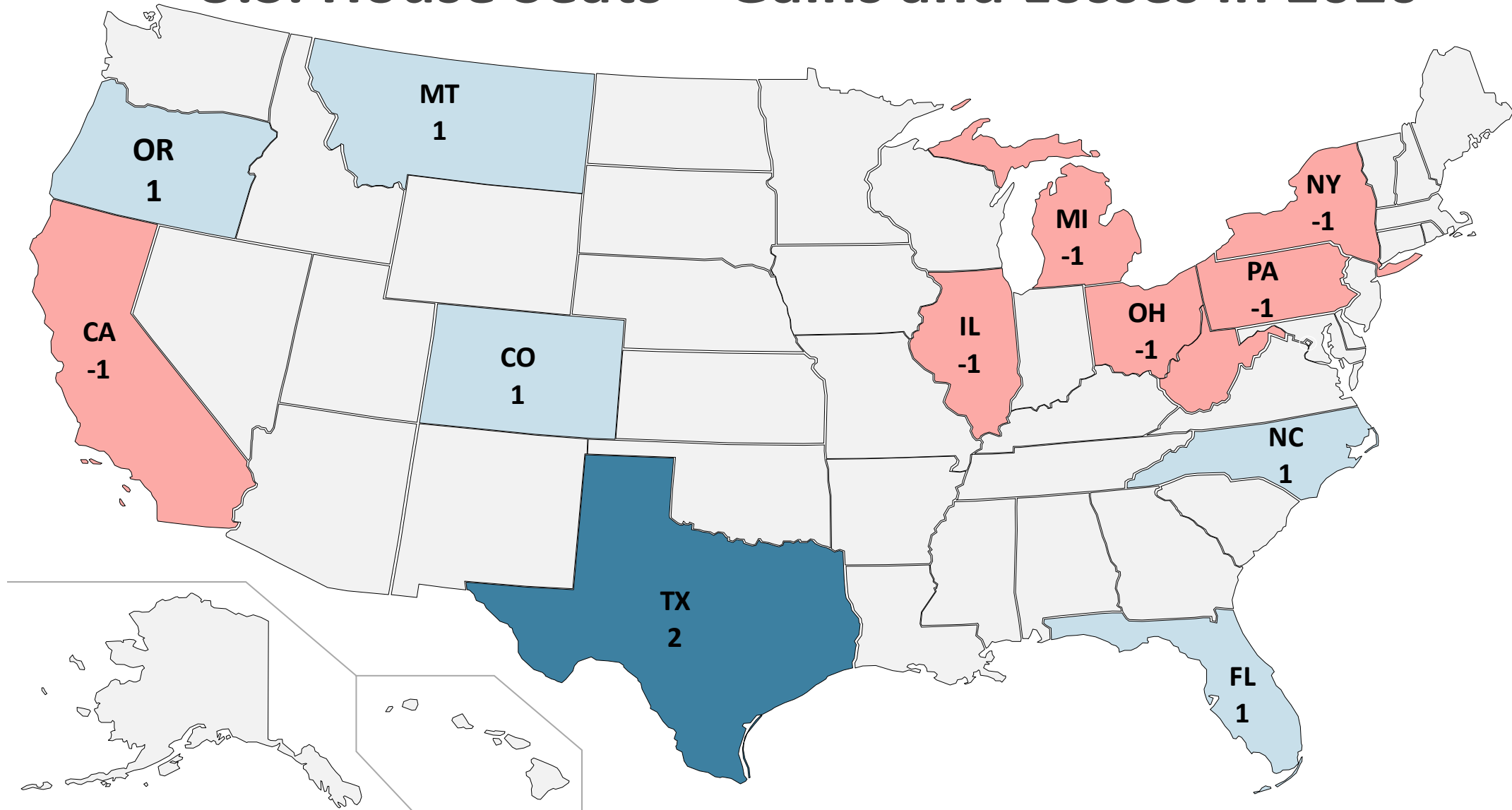
435 U.S. House seats are apportioned based on 2020 census results as follows:

- Each state receives one guaranteed Congressional seat
- Remaining 385 seats divided “apportioned” among the states based on population

Reapportionment

Resident Population		3,271,616
Overseas	+	<u>3,636</u>
Reapportionment		3,275,252

U.S. House Seats – Gains and Losses in 2020

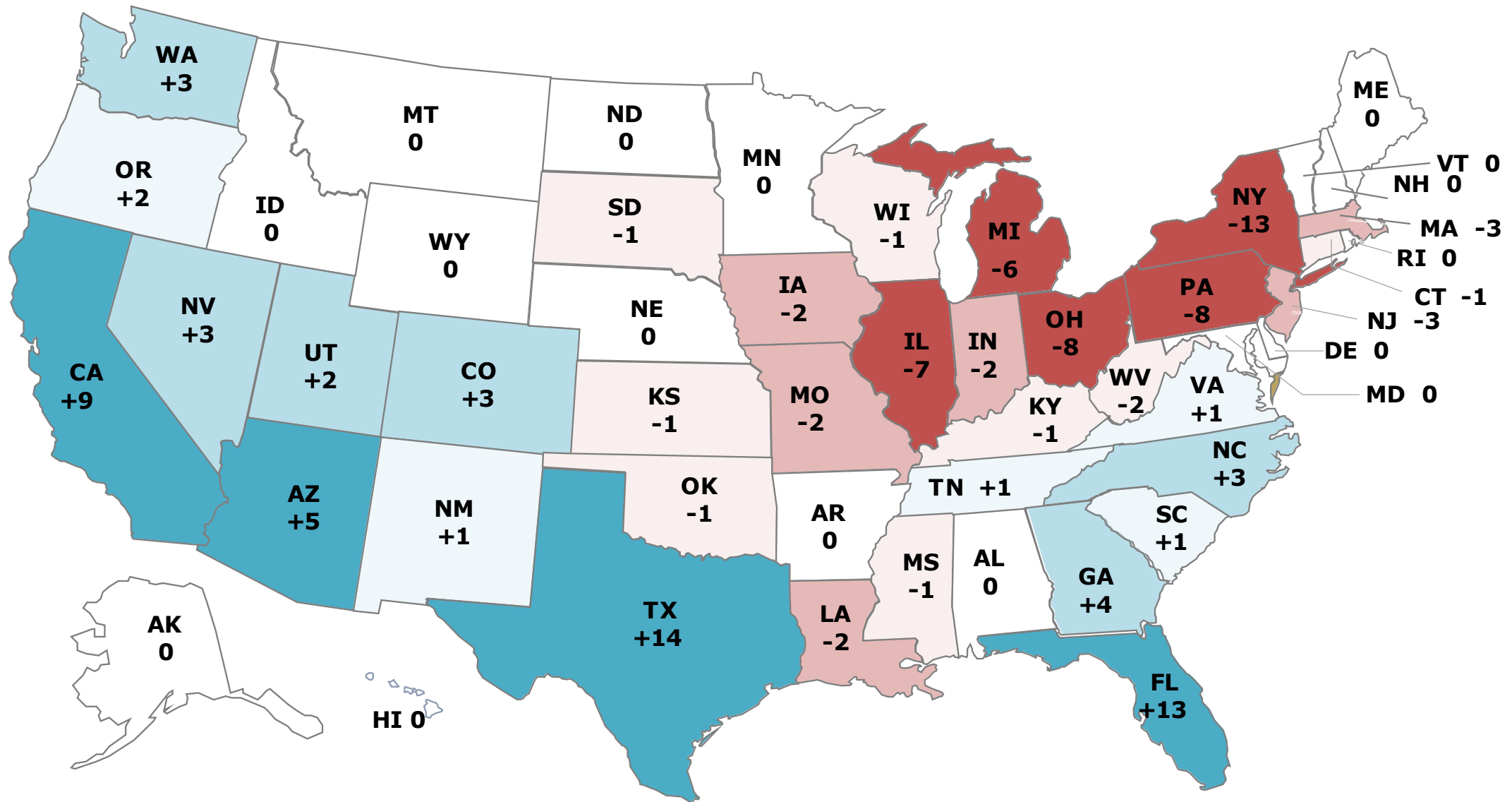


Utah's 5th Congressional Seat

And here's the play
at the plate . . .



U.S. House Seats – Gains or losses 1970 to 2020



Redistricting

Redistricting is the process of redrawing new district boundaries for congressional, legislative, and state school board districts.

Redistricting

The Legislature redraws district boundaries based on results of the most recent results of the U.S. Census Bureau **resident population** count. This count determines the ideal size of:

- Utah Congressional
- Utah House of Representatives
- Utah Senate
- State Board of Education



Resident Population

	Districts	2000	2010	2020
Population		2,233,169	2,763,885	3,271,616
Congress	3	744,390		
Congress	4	558,292	690,971	817,904
Senate	29	77,006	95,306	112,814
House	75	29,776	36,852	43,622
School Board	15	148,878	184,259	218,108



Redistricting ≠ Reapportionment

Reapportionment: reallocation of 385 Congressional districts among the states based on each *state's reapportionment population*

Redistricting: act of redrawing congressional, legislative, and state school board district boundaries based on each state's *resident population*

Why Redistrict?

- The Great Compromise
- One person, one vote
- Unequal population growth over time
- Reapportionment (No 2021 impact on Utah)
- Utah Constitution, Article IX, Section 1:
“... the Legislature shall divide the state into congressional, legislative, and other districts...”

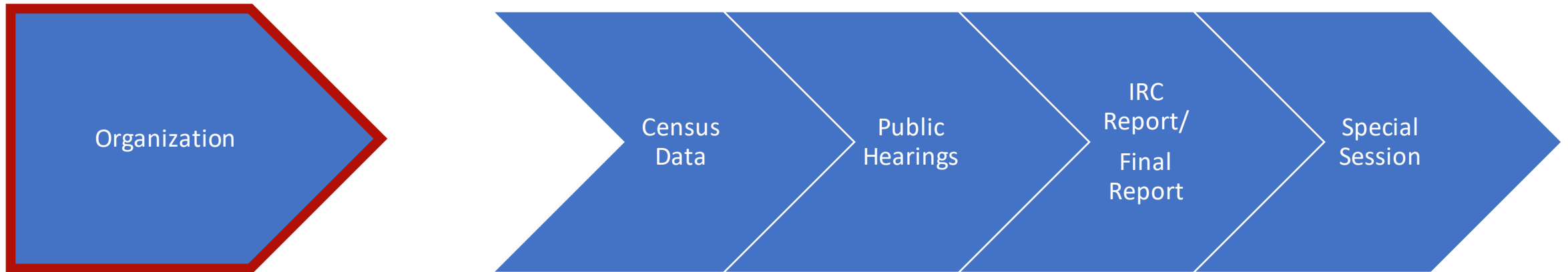
Why Redistrict?

Absolute numbers are less important than relative numbers:

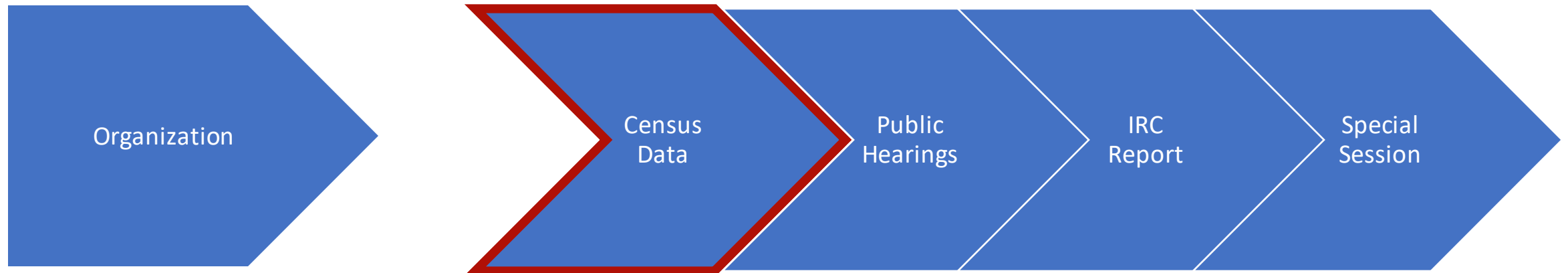
- Growth slower than average – districts expand
- Growth faster than average – districts contract

Disproportionate Growth Creates Inequity

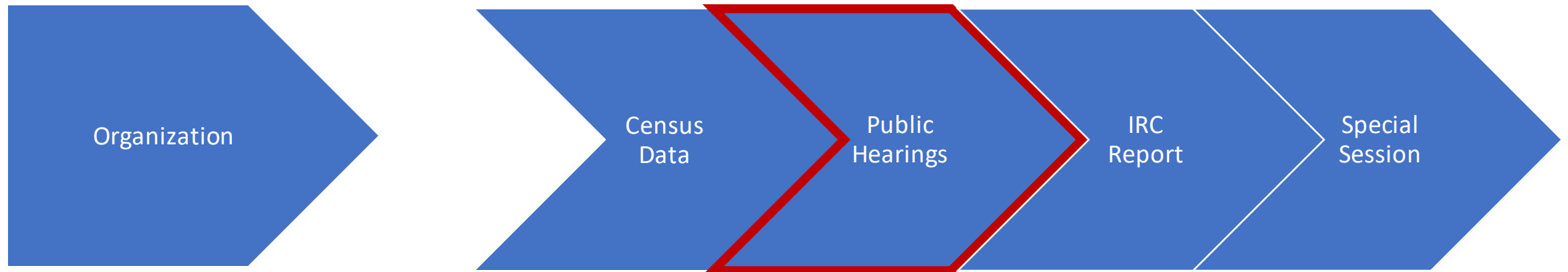
Overview



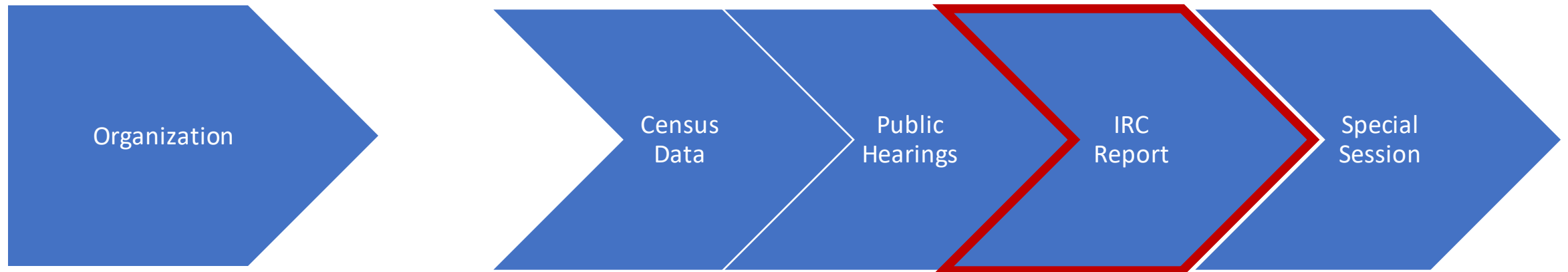
Overview of Meeting Schedule



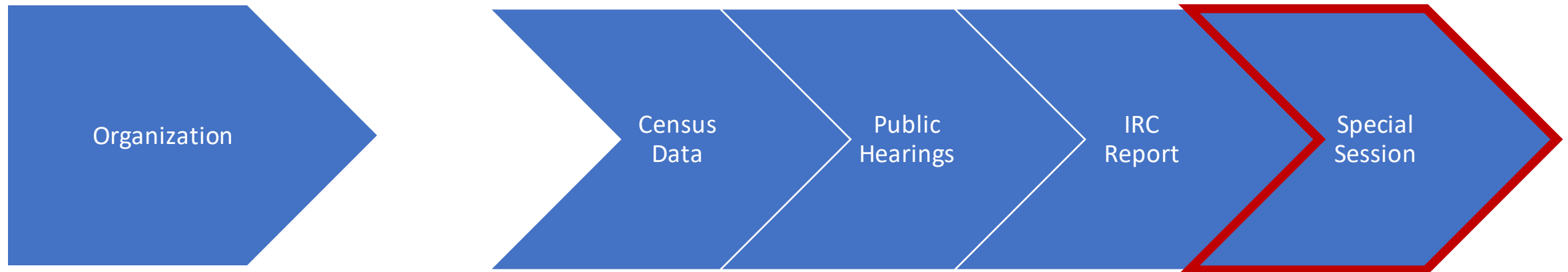
Overview of Meeting Schedule



Overview of Meeting Schedule



Overview of Meeting Schedule





The United States Census Bureau is required to:

- 1) Conduct an “actual enumeration” of all the people living in the U.S. every 10 years;
- 2) Keep personally identifiable information of respondents confidential for 72 years; and
- 3) Provide census data to the states on or before April 1, 2021.



The United States Census Bureau is required to:

- 1) Conduct an “actual enumeration” of all the people living in the U.S. every 10 years;
- 2) Provide census data to the states on or before April 1, 2021; and
- 3) Keep personally identifiable information of respondents confidential for 72 years.



Projected Delivery of U.S. Census Data

PL94-171 (Legacy file)

August 16, 2021

PL94-171

September 30, 2021



U.S. Census Bureau

PL94-171 Data

	Number of Subdivisions	Re-apportionment Population	Resident Population	American Community Survey
Statewide	1	3,275,242	3,271,616	3,096,848
County	29	X	✓	✓
Municipality	333*	X	✓	✓
Census Block Group	2,020	X	✓	✓
Census Block	71,207	X	✓	X



U.S. Census Bureau

PL94-171 Data

	Number of Subdivisions	Re-apportionment Population	Resident Population	American Community Survey
Statewide	1	3,275,242	3,271,616	3,096,848
County	29	X	✓	✓
Municipality	333*	X	✓	✓
Census Block Group	2,020	X	✓	✓
Census Block	71,207	X	✓	X



The United States Census Bureau is required to:

- 1) Conduct an “actual enumeration” of all the people living in the U.S. every 10 years;
- 2) Provide census data to the states on or before April 1, 2021; and
- 3) **Keep personally identifiable information of respondents confidential for 72 years.**



Differential Privacy

The U.S. Census Bureau has created a complex algorithm to modify data in a way that is virtually guaranteed to prevent disclosure of private information.



Differential Privacy

Defined

Differential Privacy is the technique chosen by the census bureau to protect census data from unscrupulous data analysts.



Differential Privacy

Downside

The more privacy protection that is implemented by the differential privacy algorithm the less accurate/reliable the census data becomes for redistricting purposes.

Legislative Redistricting Committee

Donut hole or Pizza pie





Redistricting Law

Overview

- Population
- Race
- Traditional Redistricting Principles
- Political Gerrymandering



Population

Overview

Congressional Districts – “One person, one vote”

State Legislative Districts – “Substantial equality”



Population

Congressional Districts

One person, one vote

“States must draw congressional districts with populations as close to perfect equality as possible.”

– United States Supreme Court



To challenge – Plaintiff must prove . . .

. . . population differences could have been reduced or eliminated “by a good-faith effort to draw districts of equal population.”

– United States Supreme Court



If plaintiff meets burden – State must prove . . .

. . . “that each significant variance between districts was necessary to achieve some legitimate goal.”

– United States Supreme Court



Congressional Deviations Struck Down by SCOTUS . . .

5.97%

4.13%



Congressional Deviations Upheld by SCOTUS . . .

.035%



Proposed Redistricting Principle: Utah Congressional Districts

“Congressional districts must be as nearly equal as practicable with a deviation not greater than $\pm 0.1\%$.”



Substantial Equality

The vote of any citizen must be “approximately equal in weight to that of any other citizen in the State.”

– United States Supreme Court



Population

State Legislative and State School Board Districts

Substantial Equality

10% Deviation Standard (+/- 5%)



State Deviations Struck Down by SCOTUS . . .

20%

16.5% (State Senate) 19.3% (State House)



State Deviations Upheld by SCOTUS . . .

16.4%

7.8%

9.9%



Proposed Redistricting Principle: State Legislative and State School Board

“State legislative districts and state school board districts must have substantial equality of population among the various districts with a deviation less than $\pm 5.0\%$.”

Race

Fundamental legal principle

“The Equal Protection Clause prohibits a State, without sufficient justification, from separating its citizens into different voting districts on the basis of race.”

- *Bethune-Hill v. Virginia State Bd. Of Elections*, 137 S. Ct. 788, 797 (2017).

“[A] racial gerrymander [is] the deliberate and arbitrary distortion of district boundaries... for [racial] purposes.”

- *Shaw v. Reno*, 509 U.S. 630, 640 (quoting *Davis v. Bandemer*, 478 U.S. 109, 164 (1986)).

A redistricting plan “that expressly distinguishes among citizens because of their race [must] be narrowly tailored to further a compelling government interest.”

- *Shaw* at 643.



Race cannot be the “predominant factor in motivating the legislature’s decision” in creating a district

- Ala. Legis. Black Caucus v. Alabama, 135 S. Ct. 1257, 1267 (2015)

Plaintiff must prove “that the legislature subordinated traditional race-neutral districting principles... to racial considerations”

- Ala. Legis. Black Caucus at 1270

- Discriminatory intent
- Discriminatory effects or results



Race

Challenging a redistricting plan

To challenge a plan based on race, a plaintiff must prove:

- Minority group is sufficiently large and geographically compact to form a majority in a single-member district
- Minority group is politically cohesive (tending to vote similarly)
- Minority's preferred candidate is usually defeated by majority bloc voting

If plaintiff meets burden, court looks at the “totality of the circumstances” to determine if the result is a dilution of electoral power:

- History of official discrimination
- Racially polarized voting
- Voting practices enhancing chance of discrimination
- Denial of minority access to candidate slating process
- Discrimination in education, employment, and health
- Political campaigns characterized by racial appeals
- Members of minority group being elected
- Lack of elected official response to minority group
- Tenuous policy underlying use of voting qualification, standard, practice, or procedure

Traditional Redistricting Principles

Principles Recognized by the United States Supreme Court



“The Gerry-mander. A new species of *Monster*, which appeared in *Essex South District* in January last.”⁶⁰



Actual map of the original gerrymander, a Massachusetts State Senate district drawn in 1812.



Map of the Massachusetts Second Congressional district, Thirteenth Congress.

Traditional Redistricting Principles

Principles Recognized by the United States Supreme Court

- Compactness

Reock



Convex Hull



Polsby-Popper



Schwartzberg

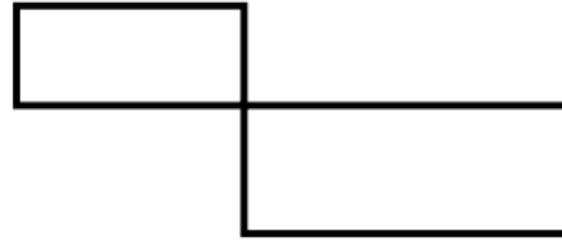


Stephen Ansolabehere & Maxwell Palmer, *A Two-Hundred Year Statistical History of the Gerrymander*, 77 OHIO ST. L.J. 741, 742-44 (2016).

Traditional Redistricting Principles

Principles Recognized by the United States Supreme Court

- Compactness
- Contiguity



FL-3 (1993-1995)



NY-12 (1993-1997)



CA-23 (2003-2011)



IL-4 (1993-2001)



GA-13 (2003-2005)



MD-3 (2013)



AZ-2 (2005-2011)



FL-17 (1993-1995)



LA-4 (1993)



FL-22 (2003-2011)



TX-25 (1993-1995)



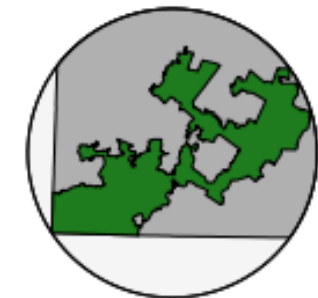
IL-17 (2003-2011)



MA-9 (1993-2001)



PA-12 (2005-2011)



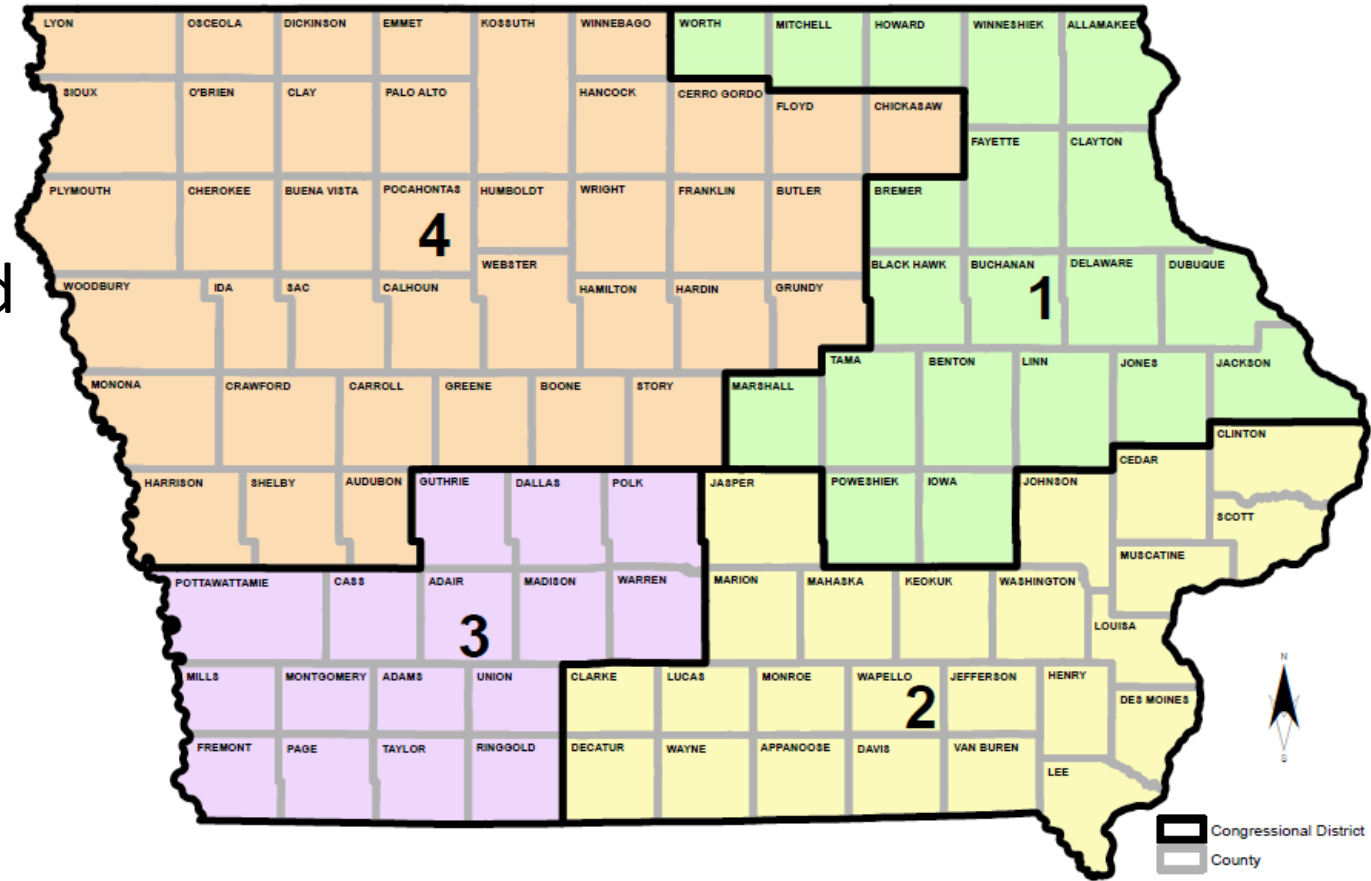
Traditional Redistricting Principles

Principles Recognized by the United States Supreme Court

- Compactness
- Contiguity
- Preservation of counties and other political subdivisions

IOWA CONGRESSIONAL DISTRICTS

Effective Beginning with the Elections in 2012 for the 113th U.S. Congress

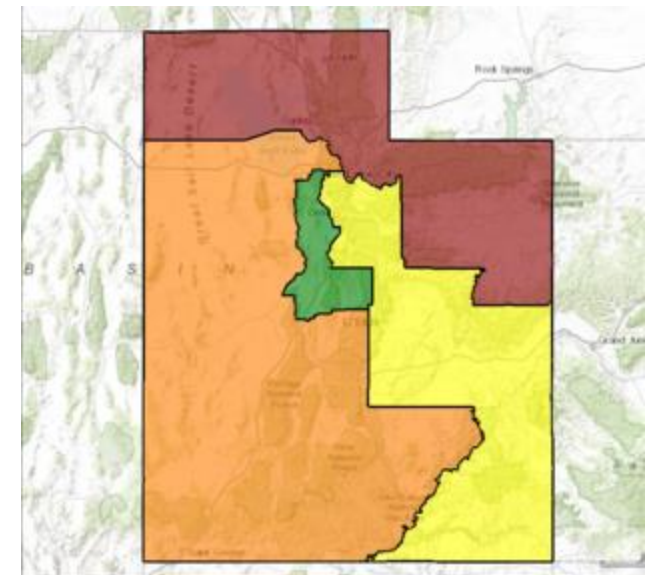


Prepared by the Iowa Legislative Services Agency

Traditional Redistricting Principles

Principles Recognized by the United States Supreme Court

- Compactness
- Contiguity
- Preservation of counties and other political subdivisions
- Preservation of communities of interest
- Preservation of cores of prior districts
- Protection of incumbents



Emerging Redistricting Principles

Largely related to political considerations



- Prohibition on favoring or disfavoring an incumbent, candidate, or party (18 states)
- Use of partisan data (4 states)
- Competitiveness (5 states)
- Proportionality (1 state)



Political Gerrymandering

Legal Status



Federal Constitution

State Constitution